

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2020- -WS

IN RE:

Request for Approval of Water and Sewer Agreement of Blue Granite Water Company

BLUE GRANITE WATER COMPANY'S REQUEST FOR APPROVAL OF WATER AND SEWER AGREEMENT

Blue Granite Water Company (the “Company”), by and through counsel, respectfully requests the South Carolina Public Service Commission’s (“Commission”) approval of a water and sewer agreement (“Agreement”) between the Company and Fielding Homes, LLC (“Fielding Homes”), pursuant to S.C. Code Ann. Regs. 103-541 and 103-743, as related to Phase 3 of the Paddlers Cove development. The Company submits that such approval without the need for notice or hearing is appropriate in this case. In support of its request, the Company would show the following:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the Commission in South Carolina. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same.

2. Applicant's representatives for purposes of this proceeding are as follows:

Samuel J. Wellborn
Frank R. Ellerbe, III
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
Telephone: 803.929.1400
fellerbe@robinsongray.com
swellborn@robinsongray.com

3. The Company operates potable water production, treatment, storage, transmission, and distribution systems and sanitary wastewater collection, treatment, and effluent disposal systems, which are located in and serve various parts of the State of South Carolina, including York County.

4. Fielding Homes is the developer of certain real estate located in Lake Wylie, South Carolina in York County (the “Properties”) comprising Phase 3 of the Paddlers Cove development.

5. The Company has water and sewer service available to serve the Properties.

6. The Company and Fielding Homes have negotiated the Agreement under which the Company will provide water and sewer service to the Properties. In turn, Fielding Homes will construct and install water distribution and sewer collection facilities necessary to serve the Properties according to the terms and conditions of the Agreement. A copy of the Agreement is attached hereto as Attachment A.

7. The Company has sufficient water and sewer service available to serve the properties subject to the Agreement being filed for approval in this case. The Paddlers Cove development is located in the Lake Wylie area, whose water supply is partially provided by the water supply interconnection with the City of Charlotte. That interconnection was completed in the fall of 2019, and the Company filed a Water Management Plan with the Commission on March 1, 2020 in Docket No. 2019-257-WS pertaining to the Lake Wylie area.

8. The Company requests Commission approval of the Agreement, and submits that the public convenience and necessity will be served by such approval. Applicant further submits that approval of the Agreement without the need for notice or hearing is appropriate in this case. Inasmuch as the Agreement is not a “new rate, toll, rental, charge, or classification or a new regulation” under S.C. Code Ann. § 58-5-240 or “a new or changed schedule” under S.C. Code

Ann. § 58-5-260, notice and hearing are not required. Because notice and hearing, where not required by law, are discretionary on part of the Commission,¹ given the nature of the Agreement, and because the requisite cost and burden of notice and a hearing would outweigh any benefit to the Company's ratepayers, approval of the Agreement without the need for notice or hearing is appropriate in this case.

WHEREFORE, the Company requests that the Agreement be approved without notice or hearing, and that Applicant be granted such other and further relief as the Commission deems just and proper.

s/Samuel J. Wellborn
 Frank R. Ellerbe, III (SC Bar No. 01866)
 Samuel J. Wellborn (SC Bar No. 101979)
 Robinson Gray Stepp & Laffitte, LLC
 P.O. Box 11449
 Columbia, SC 29211
 (803) 929-1400
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swellborn@robinsongray.com

Attorneys for Blue Granite Water Company

July 30, 2020

¹ See S.C. Code Ann. Regs. 103-817(C)(3)(a) (“[T]he Chief Clerk *may* . . . provide the party filing the pleading a Notice of Filing, and, *where required by law*, the party at its own expense shall publish such notice one time in newspapers having general circulation in the party’s service area.”) (emphasis added); S.C. Code Ann. Regs. 103-817(C)(2) (“Where provided by law, any proceeding initiated under these rules may be disposed of without hearing by Order of the Commission within 14 days after the pleading has been accepted for filing, upon the written opinion of the Commission that the pleading on its face shows that a hearing is not necessary, in the public interest, or for the protection of substantial rights.”).

AGREEMENT FOR WATER AND SEWER SERVICE
PADDLERS COVE PHASE 3D
YORK COUNTY, SC

This Agreement is entered into this 20th day of July, 2020 by and between Fielding Homes, LLC, existing under the laws of the State of North Carolina and authorized to do business in South Carolina (hereinafter referred to as "Developer"), and Blue Granite Water Company, a Delaware corporation authorized to do business in South Carolina (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS, Developer is the owner of a certain real estate parcel containing approximately 133.33 acres (a portion of Tax Parcel No 5590000021), located at 5652 Charlotte Hwy, Lake Wylie, South Carolina 29710, hereinafter referred to as the "Property" (see "Exhibit 1"); and,

WHEREAS, Developer desires to develop the Property into a residential development currently projected to ultimately consist of two hundred and ninety-five (295) single family homes, to be called "Paddlers Cove, Phase 3," having an estimated daily water usage of 118,000 gpd and wastewater usage of 82,600 gpd when completed; and,

WHEREAS, Developer desires to develop Phase 3 in an undetermined number of sub phases, this Agreement will be limited to Phase 3D (see "Exhibit 2") consisting of ninety-one (91) lots, having an estimated daily water usage of 36,800 gpd and wastewater usage of 19,320 gpd when completed; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing water and sewer service to the public in its designated River Hills / Lake Wylie Franchised Service Territory located in York County and the Property is located within the service territory. The Utility desires to have constructed and installed, and the Developer desires to construct and

install at no cost to Utility, the water distribution and wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement; and,

WHEREAS, Developer desires Utility to provide water and wastewater utility service within the Property and Utility desires to provide water and wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owner(s) of the Property; and,
2. Developer shall be responsible for obtaining and will obtain all necessary governmental approvals, permits and authorizations in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer shall cooperate with Utility in any and all applications or petitions to governmental or public authorities that Utility deems necessary, in its sole discretion, in relation to Utility's provision of water and wastewater utility service and its acceptance of dedication of all necessary facilities constructed and installed by Developer; and,
4. Developer shall convey to Utility, or otherwise vest in Utility (at no cost to Utility), such right, title and interest in and to such real estate as may be reasonably necessary to permit Utility to carry out the terms and conditions of this Agreement; and,
5. Developer shall convey to Utility or provide by recorded subdivision plats (at no cost to Utility) such easements or rights of way as Utility may reasonably require for the

Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel and applicable regulatory bodies.

ARTICLE II

Obligations and Construction of Facilities by Developer

1. Facilities

Developer shall construct and install any additional necessary water distribution and wastewater collection facilities to serve the Property at no cost to Utility, including but not limited to mains, valves, fire hydrants, service laterals, meter boxes, meters, manholes, odor control devices, lift station(s) with emergency generator(s), backflow devices, and other facilities as are reasonably required to provide adequate water, including fire protection flows, and wastewater service. Developer shall install water meters as specified by Utility. Water distribution mains shall have a minimum diameter of eight (8) inches, except where otherwise approved in writing by Utility. Developer shall connect existing water mains installed in Phase 3B and 3C at points to be approved by Utility. Wastewater collection mains shall have a minimum diameter of eight (8) inches, except where otherwise approved in writing by Utility. Developer shall connect to the gravity sewer system currently installed in Phase 3B and 3C at points to be approved by Utility. All materials used by Developer for said Facilities shall be per the Utility's specifications, new, first-class, and suitable for the uses intended therefor. Developer shall obtain industry standard warranties from all contractors working on construction or installation of the Facilities and assign or otherwise transfer such warranties in writing to Utility. In addition, Developer warrants that all construction, materials, and workmanship of the Facilities shall be free of defects for one year after the Facilities (or such portion of the Facilities) are placed into service and dedicated and accepted in

writing by Utility, and that and the Facilities (or any portion thereof) shall operate as intended, without trouble, for a period of one year after the Facilities are placed into service and dedicated and accepted in writing by Utility.

2. All Facilities constructed and installed by Developer pursuant to this Article II shall be constructed and installed without cost or expense to Utility. Developer shall be responsible for all local, state and federal taxes and permitting fees arising as a result of (i) dedication of the Facilities to Utility, (ii) acceptance of the Facilities by Utility, and (iii) the new use of the Facilities by Utility to provide water and wastewater services under this Agreement.
3. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies that may have jurisdiction thereover and must receive the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.
4. Developer shall defend, indemnify and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction or commissioning of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees, agents or assigns of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees. Further, for a period of five (5) years after Utility's acceptance of the Facilities Developer shall defend, indemnify and hold Utility harmless from and against all suits or claims, including reasonable attorneys' fees incurred by Utility to defend such suits or claims, based upon the negligent design, construction, commissioning or dedication of the Facilities by Developer.

5. Developer shall maintain general liability insurance for at least \$5 million that covers liability arising from the construction, dedication and any failure of the Facilities, and shall name Utility as an additional insured thereon.
6. Developer shall obtain, with cooperation from Utility, all requisite permits and zoning and other approvals and all else required to construct the Facilities, without cost or expense to Utility.
7. Upon written acceptance of the Facilities by Utility and interconnection with Utility's existing water and sewer system, all of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility, without cost or expense to Utility, as those Facilities are installed up to and including the water meters, meter boxes, and sewer lateral up to and including the cleanouts at the property line or easement as shown on the plans, with the exception of the service lines from the water meter outlet to each single family residence (for which the owner shall retain ownership and maintenance responsibility) and the sewer laterals from the tap cleanout to each single family residence (for which the owner shall retain ownership and maintenance responsibility). Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in Utility's opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's legal counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities constructed herein. Developer agrees to provide to Utility documentary evidence, in a form satisfactory to Utility, sufficient to establish the original cost of the Facilities. Utility shall have, at all times following Utility's written acceptance of the Facilities, all right, title and interest in and to the Facilities. Developer agrees to defend, indemnify and hold Utility harmless for any claims arising from any vendor, contract,

- subcontractor, supplier or other individual or entity to claims any ownership interest in or encumbrance on the Facilities or any of the easements dedicated or conveyed to Utility under this Agreement.
8. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction thereover, and all applicable connection fees including any applicable taxes have been paid.
 9. All connections must be inspected by Utility prior to backfilling and covering of any pipes. Written notice to Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends and official Utility holidays. If Developer fails to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
 10. Prior to the transfer to Utility of the Facilities, Developer shall grant permanent, assignable easements satisfactory to Utility, without cost or expense to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
 11. Prior to the transfer to Utility of the Facilities, Developer shall provide a close-out package to Utility, which includes but is not limited to as-built drawings, and all other information (by both hard copy and electronic copy), reasonably required to operate, maintain, and repair the Facilities. Water meters shall not be installed by Utility until the close-out package has been submitted by Developer and accepted as complete by Utility.
 12. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for ninety-one (91) water and wastewater connections located within the Property.

ARTICLE III

Other

1. Developer shall prohibit, by restricted land covenant, any owner of real estate within the Property from constructing or maintaining any private well or septic system within the Property.
2. Neither Developer nor any entity or individual affiliated with Developer may execute any agreement with any lot purchaser in the Property or any other parties or make any representations to any such purchasers or other parties that such purchaser or other parties have acquired any interest in the Facilities to be installed under this Agreement. Developer shall indemnify, defend and hold Utility harmless from any and all such claims raised by any party based on any statements, representations or actions by Developer.

ARTICLE IV

Utility Services, Connection Fees, Rates and Charges

1. Developer shall submit to Utility, upon execution of this Agreement, a nonrefundable Plan Review Fee of one thousand dollars (\$1,000.00) and a nonrefundable Inspection Fee of five hundred dollars (\$500.00) for the development. Should the Facilities require additional inspection(s) due to improper installation, defective or unapproved materials, Developer shall pay an additional nonrefundable five hundred dollars (\$500.00) for each additional inspection required.
2. Developer shall pay and deliver to Utility the sum of money which is the non-recurring service connection and capacity fees ("Tap Fees") provided for under Utility's rate schedule, as approved by the Public Service Commission of South Carolina (as may be amended from time to time), including any taxes imposed on Utility for such charges,

multiplied by the Single Family Equivalent ("SFE") rating set forth therein. For the Paddlers Cove - Phase 3D project that is the subject of this Agreement, that sum shall be a nonrefundable fee of Two Hundred Thousand Nine Hundred Sixteen Dollars and Seven Cents (\$200,916.07), which is based upon an estimated ninety-one (91) SFEs, applicable taxes and Utility's current rate schedule. Contribution in Aid of Construction (CIAC) taxes shall be calculated per Utility's Tax Gross-up Policy for Property Donated or Cash Contributed. All fees shall be paid on the date of execution of this Agreement. In addition to the above fees and taxes, Developer agrees to pay the CIAC taxes on all materials and construction costs prior to any water meters being placed in operation by Utility. If it is determined that the project contemplated by this Agreement consists of a greater number of SFEs than is estimated hereinabove, Developer shall be required to pay an additional sum to Utility for each additional SFE using the calculation provided for hereinabove, conditioned upon first receiving the approval from Utility for such increase in SFEs. In addition, Developer agrees that it will not represent to any third party that utility service is available from Utility for use within the proposed development, except (1) upon Developer's payment of the Tap Fees as provided hereinabove, (2) Developer's performance of all obligations under this Agreement; and (3) establishment of service and an account between said third party and Utility, including payment of all fees and charges authorized under Utility's approved rate schedule excepting tap fees.

3. Prior to the commencement of utility service to any parcel within the Property, the parcel's owner must pay Utility all applicable water and sewer fees, any applicable York County water and sewer impact and capacity fees, and any other fees that may be required by the Utility's Franchise Agreement with York County. Such fees, usage and all other incidental rates and charges, shall be paid to Utility in accordance with Utility's rates, rules and regulations and conditions of service on file with the South Carolina

Public Service Commission and then in effect. Capacity shall not be reserved for any lot, out parcel, commercial space or building for which the tap fee has not been paid.

4. Upon installation and acceptance of the Facilities and payment of all applicable connection fees and Contribution in Aid of Construction taxes on all materials and construction costs, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all applicable regulatory authorities.

ARTICLE V

Commission Filing

1. Within thirty (30) days following the execution of this Agreement, Utility will file an application with the Commission for approval of this Agreement, in conformance with Commission rules and regulations. Developer agrees to cooperate with Utility in any proceeding resulting from such application and to reimburse Utility its reasonable attorneys' fees, costs and litigation expenses incurred for such filing in the event such application is litigated by the Office of Regulatory Staff or opposed by third parties. The provision of water and/or sewer service to the customers within the Property is subject to the Commission's authority and approval.

ARTICLE VI

General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental

or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. If any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.

2. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
3. The representations, warranties and agreements contained herein shall survive, and continue in effect. Developer agrees to defend, indemnify and hold harmless Utility, its successors and assigns, against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
4. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing and signed by both Developer and Utility.
5. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

Blue Granite Water Company
130 South Main Street, Suite 800
Greenville, SC 29601
Attn: Travis Dupree, Vice President

If to Developer:

Fielding Homes LLC
227 W. Trade Street, Suite 100
Charlotte, NC 28202
Attn: Mr. Scott Widener, Division President

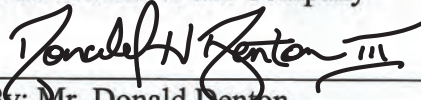
Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

6. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. This Agreement shall be governed by the laws of the State of South Carolina.
8. If this Agreement is not executed prior to July 31, 2020 then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

Blue Granite Water Company



By: Mr. Donald Denton

Its: President

Attest/Witness:

1) Travis Dupree - Travis Dupree

2) Amy S. Hopkins Amy Hopkins

Fielding Homes, LLC



By: Mr. Scott Widener

Its: Division President

Attest/Witness:

1) AMANDA COURTNEY

(Print name and title) OPERATIONS MANAGER

2) Kristine K. Wise
(Print name) Sr Purchasing Manager

